

Patent
U.S. Patent Application No. 09/919,461
Attorney's Docket No. 00-5017RCE1

REMARKS

This amendment is responsive to the Office Action¹ mailed March 16, 2005. A minor grammatical error in paragraph 47 of the specification has been corrected herein.

Claims 1-5, 7-32 were presented for examination and were rejected. No claims are canceled. No claims are added. Thus, claims 1-5 and 7-32 are pending. The independent claims are 1, 8, 17, 24, 28 and 30.

All independent claims have been amended. No new matter is added. Support for the amendments can be found throughout the specification, claims and drawings as originally filed. In the specification *see*, for example, at least: ¶6 "Systems and methods consistent with the present invention address this and other needs by wirelessly placing an order and beginning preparation of the order by a vendor prior to arrival of the customer at the vendor's location." ¶9 "[a] method of fulfilling an order from a customer by a vendor, the order being initiated on a mobile terminal before the customer arrives at the vendor..." ¶10 "Customer information may be sent to one or more locations of the vendor based on the determined locations." ¶18 "The wireless service provider may receive the abbreviated dialing sequence and may determine the customer's location. Using the customer's location, the wireless service provider may determine to which vendor location to send the customer's information." ¶21 "Signs 120 may also be

¹ The Office Action may contain a number of statements characterizing the cited reference(s) and/or the claims which Applicant(s) may not expressly identify herein. Regardless of whether or not any such statement is identified herein, Applicant(s) does not automatically subscribe to, or acquiesce in, any such statement. Further, silence with regard to rejection of a dependent claim, when such claim depends, directly or indirectly, from an independent claim which Applicant(s) deems allowable for reasons provided herein, is not acquiescence to such rejection of that dependent claim, but is recognition by Applicant(s) that such previously lodged rejection is moot based on remarks and/or amendments presented herein relative to that independent claim.

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located such that an order for goods or services places in their vicinity may be ready for delivery when vehicle 110, traveling at an expected rate of speed, reaches vendor 150.” ¶47 “It is envisioned that the system and methods described herein may be used generally to minimize a customer's wait time by time-shifting preparation of the order by the vendor to coincide with the customer's transit time...”

Claims 1-5, 7-12 and 15-32 are rejected under 35 U.S.C. § 102(b) as being anticipated by MORRILL, Jr. (U.S. Patent No. 5,991,749). Claims 13 and 14 are rejected under 35 U.S.C. § 103(a) as unpatentable over MORRILL, Jr. in view of STILP et al. (U.S. Patent No. 5,327,144). These rejections are respectfully traversed because the references, taken alone or in combination, do not disclose or suggest all elements of the currently amended claims.

Applicant has found a novel solution to the problem of delay inherent in placing orders for goods and services while waiting (possibly in line) at one of the locations of a goods and services provider (vendor). In a novel and unique manner, Applicant places those orders in advance from a remote location prior to arriving at one of the locations of the vendor, whereby those orders can be available and ready for pickup by the customer with reduced delay and preferably minimal or no delay, by the time that the customer traverses the remote distance from the location of placement of the order to a particular one of the multiple vendor locations where the order shall be filled. Thus, the fundamental dynamic of Applicant's invention involves trading-off customer's time of travel from the remote location where the customer's order is placed against inherent time delay that would have occurred, or would have been expected, in

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fulfilling the order, had the order been placed by the customer, in person, at the particular one of the multiple vendor locations. But, MORRILL, Jr. has nothing to do with this fundamental dynamic of Applicant's invention, nor does it disclose or suggest multiple vendor locations.

MORRILL, Jr. uses various vendor examples (outdoor food service, parking garage, toll booth, bus service, etc.) to describe the use of cellular telephones and other analog or digital wireless communication devices to conduct transactions and activities with a vendor. In every instance, each of these vendors has a vendor location and in no instance, to the extent Applicant can discern, does any vendor have multiple locations.² These procedures effectively allow such devices to function as an electronic wallet, a wireless PIN pad, and a contact-less Smart Card (Abstract). Although MORRILL, Jr. is an interesting reference that does show use of a cell phone to make payment for goods and services purchased by the operator of the cell phone, it does not connect these purchases and the payment for these purchases to the above-noted time delay problem, nor does it address the issue of which one of a particular vendor's multiple locations shall be chosen to provide the customer-ordered goods or services, at least because the reference simply does not disclose multiple vendor locations.

Consider Claims 1-5, 7-12 and 15-32 which are rejected under 35 U.S.C. § 102(b) as allegedly anticipated by MORRILL, Jr. Referring to claim 1, for example:

A system configured to facilitate ordering of goods or services by a customer from a vendor having multiple vendor locations, comprising: one or more base stations configured to receive an abbreviated dialing sequence that corresponds to an order from

² Even in the ambulatory bus example, the customer is either waiting for the bus at one location or is traveling on the bus and thereby constrained to the service being provided on/in the single bus "location"; in any event, the bus example, like the other examples in MORRILL, Jr., does not anticipate the subject matter recited in Applicant's claims for reasons expressed herein.

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a mobile terminal used by the customer, both the order being initiated at a remote location by the customer and preparation of the order being initiated at one of the vendor locations by the vendor before the customer arrives at the one of the vendor vendor to coincide with transit time of the customer; and a processing center coupled between the one or more base stations and the vendor and configured to receive the abbreviated dialing sequence, determine from the remote location the one of the multiple vendor locations to which to transmit customer information relating to the order, and bill a wireless account of the customer for a monetary amount of the order. (Emphasis added.)

Applicant's amended claim 1 clearly recites a system that operates with a vendor having multiple vendor locations. MORRILL, Jr. does not disclose or suggest a vendor with multiple locations (plural), disclosing only various examples of different vendors with each having one location (singular). Consequently, the issue of which vendor location to select for supplying the customer-ordered goods or services cannot be, and is not, disclosed or suggested in MORRILL, Jr. Also, MORRILL, Jr. is not concerned with ordering in advance for purposes of saving time by offsetting such order against travel time. MORRILL, Jr., therefore, does not teach various recitations in claim 1. For example, the reference does not teach or suggest at least:

- “A system configured to facilitate ordering of goods or services by a customer from a vendor having multiple vendor locations” as recited in claim 1 (Emphasis added);
- “both the order being initiated at a remote location by the customer and preparation of the order being initiated at one of the vendor locations by the vendor before the customer arrives at the one of the vendor locations” as recited in claim 1 (Emphasis added);

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- to reduce wait time of the customer by time-shifting preparation of the order by the vendor to coincide with transit time of the customer, as recited in claim 1 (Emphasis added); and
- “a processing center...configured to...determine from the remote location the one of the multiple vendor locations to which to transmit customer information relating to the order” as recited in claim 1 (Emphasis added).

A proper rejection under 35 U.S.C. § 102 requires that the reference teach every aspect of the claimed invention either explicitly or impliedly. Any feature not directly taught must be inherently present. See M.P.E.P. § 2131. At least the above-four bulleted claim recitations are not disclosed, suggested or inherently present in MORRILL, Jr., for reasons given above. Therefore, for at least these reasons, it is respectfully requested that the 35 U.S.C. § 102(b) rejection of claim 1 be withdrawn and the claim allowed.

Independent claims 8, 17, 24, 28 and 30, also rejected under 35 U.S.C. § 102(b) as being anticipated by MORRILL, Jr., have all been amended to include the same or similar language as highlighted above. It is therefore submitted that all of these independent claims are likewise allowable for the reasons presented above and that the rejection be withdrawn and the claims allowed.

Secondary reference STILP et al., a cellular telephone location system, does not cure the above-noted deficiencies of MORRILL, Jr.

Claims 13 and 14 are rejected under 35 U.S.C. § 103(a) as un-patentable over MORRILL,

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Jr. in view of STILP et al. It is respectfully requested that this rejection be withdrawn for the following reasons.

Claims 2-7 are dependent from allowable claim 1, claims 9-16 (including claims 13 and 14) are dependent from allowable claim 8, claims 18-23 are dependent from allowable claim 17, claims 25-27 are dependent from allowable claim 24, claim 29 is dependent from allowable claim 28 and claim 31 is dependent from allowable claim 30. Accordingly, each of these dependent claims is allowable, at least for reasons based on their respective dependencies from allowable base claims, as well as being allowable for reasons based on their respective recitations.

In the Response to Arguments section on page 5 of the Office Action, the Examiner takes the position that a customer is "remote" from the parking garage while the customer is on the outside of the parking garage entrance gate until the gate is open and the customer actually enters the garage. This is a position with which Applicant does not necessarily agree. Applicant's remote location in the context of Applicant's disclosure is sufficiently far from the selected vendor location to allow sufficient time when the customer is traveling at normal speeds for the vendor to at least make progress in preparation of Applicant's order. Whether or not the distance in the parking lot example meets this criterion is an issue that Applicant need not address this point, since the issue is moot in view of the allowability of claim 11 as an ultimate dependency from claim 1.

Also, as indicated in page 6 of the Office Action, although a parking garage located

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adjacent the customer inherently may be the most convenient parking garage (assuming parking availability exists in that particular garage), Applicant respectfully disagrees that the shortest linear distance between customer and vendor location always defines the most convenient vendor location for a customer with respect to all service providers, for reasons/examples provided in a previous response. Again this issue is mooted by the allowability of claim 11 for reasons noted.


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CONCLUSION

In view of the foregoing amendments and remarks, Applicant respectfully requests the Examiner's reconsideration of this application, and the timely allowance of the pending claims.

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 07-2347 and please credit any excess fees to such deposit account.

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